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Re: Globally Harmonized System (GHS) update to Section 5194, Hazard Communication

I am writing on behalf of California Rural Legal Assistance Foundation, an organization with a long history of defending workers right to know about and be protected from work place hazards. We welcome this opportunity to provide comments to the Cal/OSHA Advisory Committee considering changes to the state's Hazard Communication Standard and other Title 8 standards, as a result of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

We appreciate that the GHS is the result of more than 10 years of negotiations facilitated by the United Nations, which included representatives of governments, unions, consumer groups and employers/manufacturers from around the world. It was an opportunity for workers and consumers to improve their right to know (RTK) by expanding the scope of information disclosure and including previously-exempted products such as pesticides and pharmaceuticals.

Like many advocates of occupational and public health and workers' rights, we fought long and hard for the right to know about hazards at work and elsewhere in our lives and environments. The international GHS agreement offers significant improvements to the RTK for workers and their employers in the US and many other countries.

That is because the GHS goal in classifying and labeling chemicals is to improve -- not reduce -- the level of protection. Other goals include covering all chemicals wherever they are found (e.g., pharmaceuticals, pesticides, consumer products), and integrating information for transportation, workplaces, consumers and the environment, especially on safety data sheets (SDSs).

In that spirit, we do not believe California workers, or the general public (which includes workers), should give up

hard-won RTK rights and requirements that are stronger than those in the international agreement. We had to fight for these rights because chemical companies around the world have shown they cannot be relied on to disclose hazards for substances they are trying to sell. This troubling scenario has been recorded in various places, including the 2013 European Environment Agency report, *Late lessons from early warnings: science, precaution, innovation*.

California should be proud of its record as a consistent leader around occupational and environmental health issues including setting more protective chemical exposure limits (PELs) and establishing a mechanism for warnings about carcinogens and reproductive toxins through Proposition 65.

In fact, California's 1980 RTK law and 1981 regulations preceded the federal regulations. The law was passed after men working at the Occidental Chemical Company on the outskirts of Lathrop, California, and their wives, in 1977 discovered that working with the soil fumigant/pesticide DBCP was making them sterile and it was subsequently revealed that the pesticide manufacturer had known since 1961 that DBCP caused testicular atrophy in tests of rodents.

In California, comprehensive Material Safety Data Sheets are vital because they are used to train employees, assess exposures, make product purchasing decisions, correctly characterize waste streams, and minimize hazardous waste.

In addition, information on MSDSs is used in several specific ways, including:

- preparing the Hazardous Materials Business Plan and Hazardous Materials Management Plan, overseen by Cal/EPA and the local Certified Unified Program Agencies (CUPA);
- by the proposed *Safer Consumer Products Regulation*;
- in the Safe Cosmetics Program; and
- by physicians, consumers and environmental organizations.

The international GHS agreement allows innovative approaches like these to be retained or added. And the federal *Occupational Safety and Health Act* says that state-run plans should be "at least as effective as" the federal law and regulations, and can go beyond those "rules" in the context of compelling local conditions that do not unduly burden inter-state commerce. A 1997 court decision about the integration of Prop 65 and the HazComm Standard, and federal OSHA's approval of the result, provide guidance about this.

Simply put, we want to uphold the spirit and principles of the GHS: provide more information to protect workers, the public and the environment. Providing less is not in compliance with the agreement.

Industry representatives have claimed that California should adopt the federal OSHA version of GHS regulations because these are the GHS, but this is incorrect. The only true GHS is the latest version of the international agreement, as updated regularly by working committees which allows innovative approaches and requirements to be retained or added by governments, including requirements which meet and exceed California's current hazard communication regulation requirements.

The European Union's version of the GHS has no exemptions; consumer products are required to be labeled and immediate notification of significant changes to an SDS is required, along with classification of all carcinogens and labeling of all ingredients.

In harmonizing with the GHS, Canada plans to retain the Workplace Materials Hazardous Information System (WHMIS) approach of 0.1 % disclosure rules for all carcinogens, reproductive toxins, respiratory sensitizers and mutagens.

The Australian rules require disclosure of all carcinogens, sensitizers and reproductive toxins whether or not they are considered a "trade secret". And data sheets must be "amended when necessary to ensure it contains correct, current information, for example if new data becomes available which changes the chemical's hazard classification".

Comments on specific items the advisory group plans to discuss:

Source lists

Floor or source lists should be retained in California's hazard communication regulations because they provide an authoritative basis for including chemicals in an SDS and are prepared by entities without any commercial interest in continued or expanded use of any particular chemical. Since these lists have been used for 30 years under the California Hazard Communications standard, continued use will not add any burden to manufacturers or importers.

DOSH should also use this opportunity to add source lists beyond carcinogenicity and reproductive toxicity, for the full range of hazard categories in the GHS. Appropriate sources for additional lists to consider include the latest version of the California *Safer Consumer Product Regulations* and the SIN2 list used in Europe.

Communication requirement for substances for which there is one positive scientifically valid study

This requirement is vital for preventing data from being hidden and ensuring that workers, employers, physicians and other occupational health professionals have early warning of hazards so we do not have a repeat of the DBCP tragedy.

Statement regarding testing

The GHS document and federal OSHA's update to its HCS both say that available scientific evidence or literature is to be used for classification of hazards. However, it can be difficult to accurately assess the hazards of chemicals and their mixtures based on the limited testing data for many individual chemicals and most mixtures. We would therefore support development of a requirement to require some scientifically valid testing when needed to fill in "data gaps" to supplement evaluation of reliable scientific information from tests that have been done. The GHS (sections 1.4.6.3 and 1.4.7.2.1) specifically allows for competent authorities to require additional or updated information to supplement data from available sources.

Mixture percentages

Full disclosure of the ingredients in chemical products is crucial to honest, transparent and effective hazard communications. A 1% cutoff doesn't provide adequate information for many chemicals, especially those with high potency and even a 0.1% cutoff is inadequate for endocrine disrupting chemicals which have a U-shaped dose response curve.

Time to revise labels

Cal-OSHA regulations should retain or improve upon the 3-month requirement for updating labels for products that aren't subject to an approval mechanism (eg pesticides) rather than weakening the requirement to 6 months. It is critical for worker health and safety to provide new chemical hazard information to employers and other chemical purchasers, workers, and the public as soon as possible. Delay can lead to serious injury and uninformed chemical purchase choices. The GHS (section 1.4.7.2.2) directs that updating should be carried out promptly on receipt of information according to a time limit specified by the competent authority

We look forward to participating in the discussion at the April 9th meeting to defend California's strong hazard communication protections.

Sincerely



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